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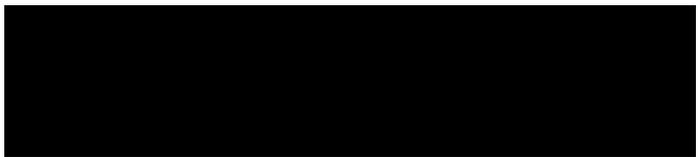
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 02 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, claiming to be a native and citizen of Honduras, is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because she had been convicted of two felony offenses committed in the United States. The director, therefore, denied the application.

On appeal, the applicant asserts that she totally disagrees with the director's findings. She claims that she did not transport narcotics or even purchase cocaine, that she is a hard working individual, and that she is always obedient to the laws. She submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, shows that the applicant was arrested by the Long Beach Police Department on February 14, 1992, and charged with Count 1, [REDACTED] A) HS, Transport/Sell Narcotic Controlled Substance, a felony; and Count 2, [REDACTED] HS, Possess/Purchase Cocaine Base for Sale, a felony. The FBI report shows that the applicant was convicted of both Counts 1 and 2.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because she had been convicted of two felony offenses.

The applicant, on appeal, asserts that she did not commit these offenses. She submits additional evidence in an attempt to corroborate her claim.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the

opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record, however, shows that the applicant was requested on July 19, 1999, to submit police records, court documents, and final dispositions of her arrests. She submits a letter dated September 15, 1999, from the Long Beach Municipal Court, Long Beach, California, indicating that no records were found regarding the applicant. The applicant, on appeal, submits a letter dated August 1, 2003, from the Executive Officer/Clerk of the Superior Court of the State of California, County of Los Angeles, indicating that "a thorough search of the Superior Court indices for a Long Beach case for the time period from 1992 through present, for the name of [REDACTED] and that: There is no record of any Long Beach action under the aforementioned name." It is not clear from the record, however, if the case was heard in this court, or in another court. It is noted that the conviction is registered as "CASC Los Angeles Long Bch." Further, the applicant could have submitted a clearance or a criminal record check from the State of California, Department of Justice, to show that her fingerprints reveal no criminal history record in their files.

Convictions of these two felony offenses will render the applicant ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act, and inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. The applicant has failed to submit the complete, actual final court disposition of these offenses. The applicant is, therefore, ineligible for TPS based on her failure to submit the final court disposition of her arrests.

It is noted for the record that the FBI report also shows that the applicant was born in Mexico on November 28, 1958. At another time, it appears that she claimed Nicaraguan citizenship.

The burden of proof is upon the applicant to establish that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.